



BEAR RIVER COMMISSION

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DEC 16 1994

**WATER RIGHTS
SALT LAKE**

MEMORANDUM BR94-51

TO: Commission Members

JAB **FROM: Jack A. Barnett, Engineer-Manager**

SUBJECT: BEAR LAKE DREDGING LAWSUIT

DATE: December 14, 1994

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Jack A. Barnett
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A newspaper article, which is enclosed, announced the filing of a suit by the Law and Water Fund of the Rockies and others against the Army Corps of Engineers and EPA, alleging that a 404 permit must be filed if Utah Power is to be allowed to dredge a channel through a sandbar so that water can flow to the Power company's Lifton pumps. The suit was filed Thursday, December 8, 1994 in the U.S. District Court in Salt Lake City. A copy of a few pages of that long document is also enclosed.

Federal agencies have 60 days to respond. After their response, early hearings could be scheduled by Judge Winder, who has been assigned to hear the case. Utah Power has been allowed to dredge in the past without a 404 permit based on a determination by the Corps that a permit was not needed because agricultural activities are exempt and the water is being pumped for irrigation.

At the early hearings, it is possible that the plaintiffs would seek a temporary restraining order. If this were granted, the end result could be that Utah Power could not dredge until either the issue of whether or not a permit is needed is resolved, or a 404 permit were obtained. Either option could delay and, hence, interfere with Utah Power's plans to dredge before the irrigation season. You may recall that Utah Power indicated that they hope to dredge as soon as the ice was off the lake so as not to cause turbidity in lake waters when the pumping is occurring during the irrigation season.

At the Commission meeting three weeks ago, we were told that the snow water equivalent in the Bear River watershed was about 95% of

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average. With recent storms, including the one last night, the snow water equivalent has increased slightly, but is still not quite up to average. You may also recall that, at the Commission meeting, Carly Burton reported that without dredging, Bear Lake only holds about 100,000 acre/feet that could flow across the sandbar to the pumps. As the suit develops, I will keep Commission members informed.

np

enclosures

cc: Technical Advisory Committee

Carly Burton

Jody Williams

Lee Case

Bob Morgan

Randy Budge

Marc Gibbs

Brent Rose

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Bear Lake residents sue U.S. over dredging

Olsen and other plaintiffs say Utah Power project leaves them high and dry.

By Brent Israelsen
Deseret News staff writer

Former pro-football star Merlin Olsen is among hundreds of Bear Lake residents tackling the federal government for allowing Utah Power to dredge a lake channel without a permit.

Olsen and others who own homes on the shores of the lake filed a complaint Thursday in U.S. District Court in Salt Lake City, saying the Army Corps of Engineers is violating the Clean Water Act by not requiring Utah Power to obtain a permit under Section 404 of the act.

Such a permit is required whenever wetlands or waterways are altered.

Bear Lake is a "treasure" that is being damaged possibly beyond recovery, thanks to activities of government and industry, said Olsen,

president of a 150-member citizens group called Bear Lake Watch.

For years, homeowners have complained that too much water is leaving Bear Lake for agricultural, municipal and electrical-generation interests downstream.

Utah Power pumps water from the lake to Bear River through a channel that is dredged to allow more water out of the lake.

Often, the pumping leaves lake-shore property owners high and dry. Plans to lower the lake another 4 feet could expose another quarter mile of lake bed, Olsen said.

"This area, which my family now uses for recreation, would be transformed into mosquito-infested, marsh-like lands," Olsen said.

Utah Power is caught in the middle of the fight. Although it generates an insignificant amount of hydroelectric power with the Bear Lake water, it's bound by contracts and court decrees to deliver water to farmers downstream.

That often requires dredging of the channel, a practice that should be challenged through the Section 404 permitting process, according to Randall Weiner, attorney for the Law and Water Fund of the Rockies, an environmental law group based in Boulder, Colo., that is assisting the Bear Lake landowners in their lawsuit.

In an affidavit, Otto Mattson, former mayor of Garden City, Rich County, said it's unfair that the Army Corps of Engineers requires landowners to get a Section 404 permit for removing vegetation on the lake shores but doesn't require Utah Power to get a permit for a major dredging project.

Army Corps of Engineers spokesman Jim Hackett said his agency could not comment on the issue because it has not yet seen a copy of the lawsuit.

The agency in the past, however, has argued that Utah Power does not need a permit because its service is benefiting farmers, who are exempted from Section 404 rules.